

CLAIMS AGAINST

THE

FEDERAL GOVERNMENT.

REPORT OF DELEGATION.

1902

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Longley, J.W

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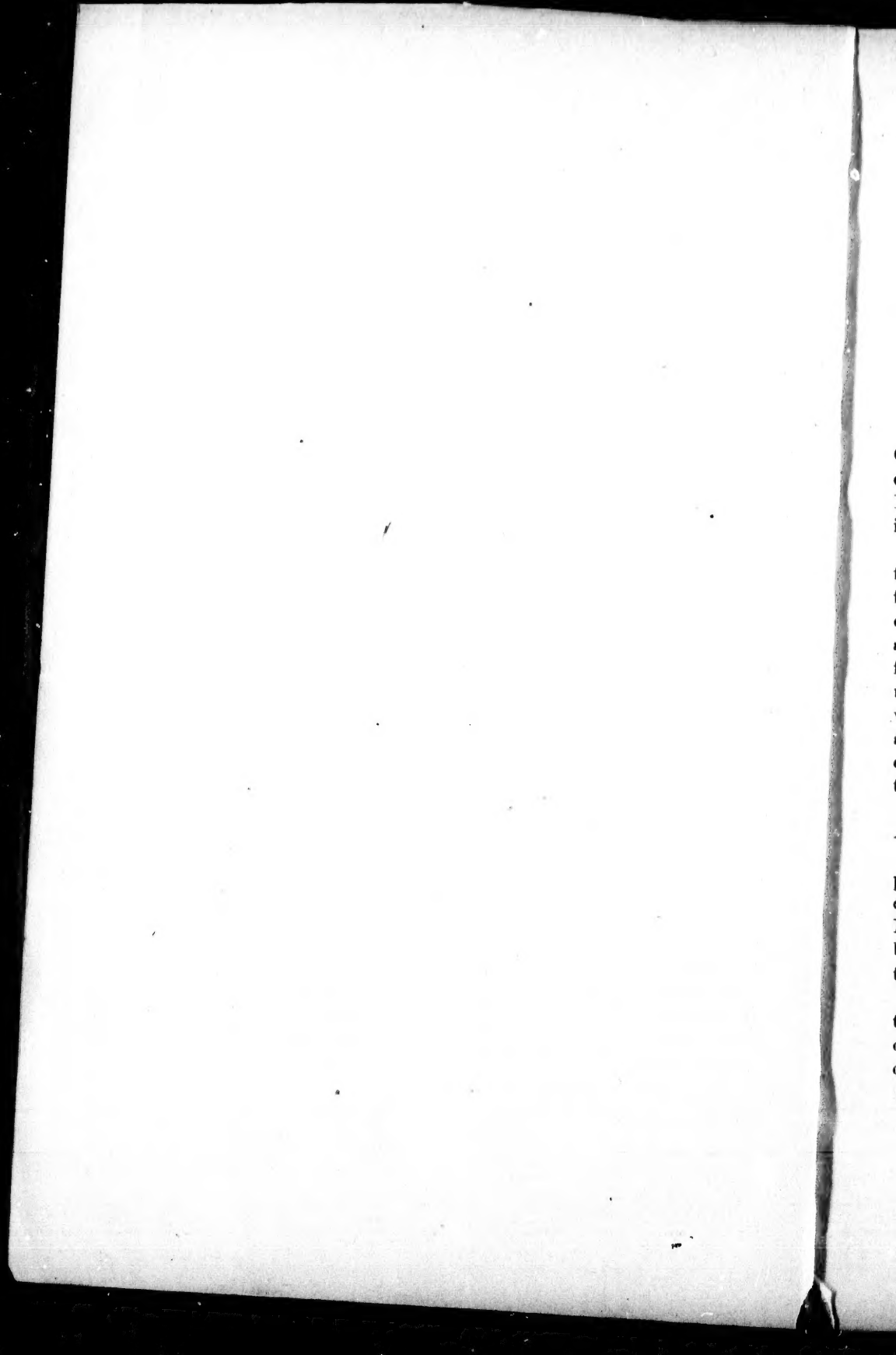
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**REPORT OF DELEGATION.**



HALIFAX, N. S.

1893.



# CLAIMS AGAINST THE FEDERAL GOVERNMENT.

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## REPORT OF DELEGATION.

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By Minute of Council the undersigned were instructed to go to Ottawa and urge upon the Government of Canada personally the claims of this Province against the Dominion in respect of the Eastern Extension Railway and the Western Counties Railway, as set forth in a joint Memorial of both branches of the Legislature in 1891.

Accordingly on the 25th of October we left for Ottawa, having first communicated with Sir John Thompson and obtained assurances from him that the Government would be prepared to meet us and discuss the matter upon our arrival. We reached Ottawa on the 27th and at once obtained an interview with the Minister of Justice and from him we ascertained that the subject of the Memorial had been referred to the Department of Railways and Canals. We thereupon waited upon the Hon. Mr. Haggart, the Minister of that Department, and had a very long and full discussion of the whole subject. We endeavored to make him fully understand the facts of the case and the basis upon which the claims of this Province rested.

The next day we made an arrangement with Sir John Thompson, Acting Premier, for a hearing before the Privy Council.

In order that our position might be understood in advance we prepared and submitted the annexed statement, in which we endeavored to embody fully, as far as possible, the case on behalf of Nova Scotia. On a subsequent day we had the privilege of going before the Privy Council. We addressed the members at length on the case and discussed the subject with the various members in detail.

No decision was given. But the Acting Premier assured us that the matter would be fully considered by the Government at an early date and an answer given. Finding it impracticable to obtain any definite decision before leaving we then returned to this Province.

We have the honor to be,

(Sgd.)

J. W. LONGLEY.  
THOMAS JOHNSON.

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OTTAWA, OCT. 28, 1892.

TO HIS HONOR THE LIEUTENANT GOVERNOR.

SIR :—During the session of 1891 a joint Address was presented by the Legislative Council and House of Assembly of Nova Scotia to His Excellency the Governor-General upon the subject of certain claims which the Province of Nova Scotia has upon the Government of Canada in respect to the Eastern Extension Railway of Nova Scotia, so called, as also, in respect of the Western Counties Railway. Said Address was duly forwarded to His Excellency through the Lieutenant-Governor of the Province. The receipt was duly acknowledged, but no answer to the representations and claims set forth in that Address has ever been received by the Lieutenant-Governor or by any member of the Nova Scotian Government.

We have been commissioned by the Lieutenant-Governor to discuss with you and your colleagues the subject matter of this Memorial, to urge a full and fair consideration of its representations, and to secure, if possible, some definite answer from the Government of Canada in respect thereto.

We do not propose to refer to the exact terms of the Memorial which we presume has been already carefully read and noted ; but perhaps you will permit us to supplement the somewhat bald statements of the Memorial with some further observations in support of the claims therein set forth.

Speaking in general terms the Intercolonial Railway, extending from Quebec to Sydney Harbor, has all been constructed by money voted by the Parliament of Canada, except the portion between New Glasgow and the Strait of Canso, which has been constructed in part by money voted by the Legislature and paid by the Government of Nova Scotia. It is true that the Eastern Extension was handed over to the Government of Canada by the Government of Nova Scotia in 1884 for a certain sum then agreed upon. But we take the liberty of calling your attention to the circumstances under which this agreement was consummated. The Government of Nova Scotia had then just exercised the power reserved in its contract with the Halifax and Cape Breton Railway and Coal Company to acquire their line between New Glasgow and the Strait of Canso on the full assurance that no difficulty would be placed in the way of obtaining the Pictou Branch, so called, from the Dominion Government. It had been set apart as a subsidy for the construction of the Eastern Extension Railway by express enactment of the Federal Government. But

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when application was made by the Nova Scotian Government to obtain this Pictou Branch difficulties were put in the way and terms were imposed of that character which made it utterly impossible for the Government of Nova Scotia to comply with and make the transaction consonant with the financial resources of the Province.

As a consequence after long and trying negotiations, the full record of which will be found in the Journals of Nova Scotia 1884, Appendix No. 11, the Government of Nova Scotia was compelled to hand over the Eastern Extension Railway to the Dominion Government on terms that were practically fixed and dictated by the latter. The correspondence to which we have referred will show that the Hon. Messrs. Pipes and Fielding, who represented the Government of Nova Scotia in those negotiations at Ottawa, demanded at the time that the Province should be recouped the sum that had been paid out in the way of subsidy to secure the construction of the Eastern Extension Railway, a sum amounting to about \$671,836, but this was refused.

Subsequently the Parliament of Canada voted money to extend the Intercolonial Railway from the Strait of Canso to Sydney Harbor and the Eastern Extension thus became a part of the Intercolonial Railway and it is submitted that the Province thereby has acquired a moral and equitable right to be refunded the amount paid out for a subsidy in the construction of this road. It seems quite manifest that the policy of the Government of Canada to extend the Intercolonial Railway to Sydney Harbor would have made the construction of the piece of road between New Glasgow and the Strait of Canso inevitable as a Government work and we are unable to understand any sound reason whereby the Government of one of the Provinces should be called upon subsequent to Confederation to contribute out of its revenues to the construction of a work national in its character and extending through different Provinces of the Dominion. Precedents will show that in the past history of the Dominion the Province of Quebec has been recouped for monies paid out under almost identically similar conditions and upon the ground, if we apprehend aright, that the work so subsidized had developed into a work of a national character.

The case of the Province in respect of the Western Counties Railway seems even stronger. This work has been constructed by virtue of aid and assistance given to it by the Legislature of Nova Scotia. Indeed, up to a recent period, the Parliament of Canada had contributed nothing to the construction of that line.



The road itself being a railway entirely within the boundaries of one Province was subject to the control of the Provincial Legislature. By an act of Parliament (1887) this road was made a railway for the general advantage of Canada under the terms of Section 92 Sub-Section 10 (c) of the B. N. A. Act. We do not presume to dispute the constitutional right and authority of the Federal Government to exercise this power in respect of any public work situate within any Province; but we do maintain that it was never the intention of the B. N. A. Act nor is it consonant with reason and justice that this should be done without reasonable compensation. As the Province of Nova Scotia had contributed \$679,197 to the Western Counties Railway Company to secure the construction of this road, and as by the deliberate act of the Federal Parliament all control of the road has passed away from the Legislature of Nova Scotia we claim that the Government of Canada is bound by every consideration of justice to recoup the sum actually paid out with interest.

When this Act was passing through the Parliament of Canada in 1887 every effort was made on the part of the Government of Nova Scotia to protect the interests of the Province and protest against this legislation as will be seen by the following telegrams:—

“ HALIFAX, 16TH JUNE, 1887.

“ SIR CHARLES TUPPER, Minister of Finance,  
HON. A. W. MCLELLAN, Post Master General,  
HON. J. S. D. THOMPSON, Minister of Justice.

Ottawa, Ont.

Have just seen in the public press copy of a bill now before the Dominion Parliament respecting the Western Counties Railway. On behalf of the Government of Nova Scotia I protest against the passing of said bill.

Its provisions, if enacted, would be a flagrant violation of the constitutional rights of the Province and a direct repudiation of the Company's debts which they induced the Province to guarantee. Besides making very liberal grants of money and land as subsidy to this road the Provincial Government in 1879 guaranteed the Company's debentures in perpetuity to the amount of fifty-five thousand pounds sterling, taking as security a first lien on the road with power of sale in event of default. The Company have been in default from the beginning under that agreement, having neither paid the interest

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nor fulfilled the other conditions. Our Government have generously refrained from exercising their powers of sale. The Company now without any communication with our Government apply to the Dominion Parliament for an Act intended to take the road out of the legislative control of the Province, wipe out the only security the Province has and authorize the issue of new debentures to be a first charge. The measure is so flagrantly wrong that we cannot believe the Parliament of Canada will allow it to pass. We do not admit the power of that Parliament to give legal value to the company's bill, but we prefer at present to urge the moral rather than the legal objections to the course taken by the Western Counties Company. We think the Government of the Dominion should be made aware of the extraordinary character of the measure referred to, and, therefore, this telegram is sent to each of the Ministers from Nova Scotia in the hope that they will take steps to prevent the passing of the bill.

(Sgd) W. S. FIELDING,

Provincial Secretary."

" OTTAWA, 16 JUNE, 1887.

" HON. W. S. FIELDING,

Halifax.

Bill of Western Counties Company as introduced was not approved by Government or Railway Company. As amended no lien is disturbed until the holder of it assents. New debentures cannot displace these formerly issued without assent of every debenture holder.

Having no wish to see rights or securities of Province impaired would be glad to know what feature of bill as amended will have that effect in your opinion. Do not agree with you as to our right to take control of this railway or as to effect of that step being injurious to Nova Scotia.

(Sgd.) J. S. D. THOMPSON."



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" HALIFAX, JUNE 17TH, 1887.

" HON. JOHN S. D. THOMPSON,

Minister of Justice,

Ottawa, Ont.

I cannot point out any objectionable features in the bill as amended because I have never seen the amendments.

If our lien is to be protected it should be in the clearest and most unquestionable terms. The bill should contain a clause providing that nothing therein shall be held to abridge, restrict or in any way affect the power of sale or any other power, right or privilege given to the Government of Nova Scotia by the Western Counties Railway Company under and by virtue of a certain agreement made on the sixteenth day of August 1879 between Her Majesty the Queen represented by the Honorable Samuel Creelman, Commissioner of Public Works and Mines for the Province of Nova Scotia, and the Western Counties Railway Company. Will this clause be inserted? The agreement which you are familiar with will be found in the Engineer's report in the Journals of 1880.

(Sgd.) W. S. FIELDING."

HALIFAX, JUNE 18, 1887.

" SIR CHARLES TUPPER,

Minister of Finance,

Ottawa.

Have not seen the amendments to Western Counties bill. Have sent to Minister of Justice a clause which seems to be essential, if the protection of our interests is to be real.

(Sgd.) W. S. FIELDING."

JUNE 17TH, 1887.

" HALIFAX, 22ND JUNE, 1887.

" HON. SIR CHARLES TUPPER,

Minister of Finance,

Ottawa, Ont.

Please have sent to me to-day by wire the text of the amendments to the Western Counties Railway bill which the Minister of Justice says protects the claim of our Government.

(Sgd.) W. S. FIELDING."

" SIR CHARLES TUPPER,

Ottawa.

The words of the amendment are good so far as they go, but something more is required. If the intention is to give a *bona fide* protection to our claim we cannot understand why the clause proposed in my telegram to Minister of Justice is not added. We still protest against the passage of the bill in its present shape.

(Sgd.) W. S. FIELDING."

In addition to that a telegram was sent to Sir John Thompson, Minister of Justice, drawing attention to the objectionable character of this legislation dated June 16th, to which the following was received in reply :—

" OTTAWA, 16 JUNE 1887.

" HON. ATTORNEY-GENERAL.

Am not aware of any provisions in any bill being passed that will effect injuriously any security of the Province.

Does your telegram refer to the Company's bill or to the Government bill affirming the contract? Please refer me to the particular provision you think objectionable.

(Sgd.) J. S. D. THOMPSON."

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FIELDING."

JUNE 18, 1887.

To which the following answer was sent :—

" HALIFAX, JUNE 17TH, 1887.

" TO MINISTER OF JUSTICE,

Ottawa.

Referred entirely to Mill's bill. Section one of copy I have seen, makes Western Counties Railway for general advantage of Canada. Clause five authorizes debentures and clause eight makes those first lien. Have understood that this has been made subject to Nova Scotia Government lien, but as the instrument taken by the Government of Nova Scotia in 1879 only gives us power of sale, the making of Western Counties a railway for the advantage of Canada threatens to interfere with our power of sale.

My view is that Mill's bill ought not to abridge in any way the securities now available to this Province.

(Sgd.) J. W. LONGLEY."

Having thus against our protest, and no doubt for objects which were believed to be in line with the public interest, removed this road in which the Province had such large interests entirely from the control of our Legislature and vested it under the exclusive control of the Government and Parliament of Canada, we are unable to understand how the latter can with any reason or justice avoid refunding to the Province the money which the work has cost it. It is quite likely that the Parliament of Canada has the constitutional power to declare the Parliament Buildings now occupied by our Government and Legislature a work for the general advantage of Canada ; but we can scarcely imagine that any Federal Parliament would think of taking such a step without providing a compensation equal to the highest possible value of the work so taken.

We have to ask that you will submit these matters to the early and serious consideration of His Excellency's advisers with a view to a definite answer. If further light is required we should be most happy to discuss the matter at any time with yourself or a committee of the Privy Council. Any information or data which we have at command will be cheerfully furnished upon request and we shall be glad during our present visit to Ottawa to meet and discuss the matter as fully as possible with either a committee of the Privy Council or at a full meeting if such can be conveniently secured.

NE 17TH, 1887.

We await with confidence a favorable response to the claims and representations which we, on behalf of the Government of Nova Scotia, have ventured to submit to your consideration.

We have the honor to be,

(Sgd.) J. W. LONGLEY,

THOMAS JOHNSON.

HON. JOHN HAGGART,

Minister of Railways and Canals.

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